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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0980-PWS-E **TCEQ ID:** RN102673399 **CASE NO.:** 33862
RESPONDENT NAME: El Paso County Water Control Improvement District 4

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: El Paso County WCID 4 Fabens, 117 East Main Street, Fabens, El Paso County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received May 18, 2007, concerning a brown color to the water and low pressure in the distribution system. It was discovered that one of the water lines had developed a leak, which was then repaired. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 8, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Yuliya Dunaway, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4077; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468 Respondent: Mr. Mario Aguirre, President, El Paso County Water Control Improvement District 4, P.O. Box 3880, Fabens, Texas 79838 Ms. Geri De La Torre, Interim General Manager, El Paso County Water Control Improvement District 4, P.O. Box 3880, Fabens, Texas 79838 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: May 18, 2007</p> <p>Date of Investigation Relating to this Case: May 21, 2007</p> <p>Date of NOV/NOE Relating to this Case: June 5, 2007 (NOE)</p> <p>Background Facts: This was a complaint investigation. One violation was documented.</p> <p>WATER</p> <p>Failed to issue a boil water notification to the customers of the water supply within 24 hours after the outage that occurred on May 17, 2007 [30 TEX. ADMIN. CODE § 290.46(q)(1)].</p>	<p>Total Assessed: \$395</p> <p>Total Deferred: \$79 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$316</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that El Paso County WCID 4 issued a boil water notification on May 21, 2007, and rescinded the notification on May 22, 2007 due to negative bacteriological sampling results. Additionally, by May 21, 2007, El Paso County WCID 4 implemented procedures to ensure that boil notifications are provided to the customers.</p>

Additional ID No(s): 710018



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

TCEQ

DATES

Assigned 11-Jun-2007

PCW 19-Jun-2007

Screening 19-Jun-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent El Paso County Water Control Improvement District 4

Reg. Ent. Ref. No. RN102673399

Facility/Site Region 6-EI Paso

Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No. 33862

Docket No. 2007-0980-PWS-E

Media Program(s) Public Water Supply

Multi-Media

No. of Violations 1

Order Type 1660

Enf. Coordinator Yuliya Dunaway

EC's Team Enforcement Team 2

Admin. Penalty \$ Limit Minimum \$50 Maximum \$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

4% Enhancement

Subtotals 2, 3, & 7

\$20

Notes

The penalty enhancement is due to two prior NOV's for the non-similar violations as those in the current enforcement action.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

25% Reduction

Subtotal 5

\$125

Before NOV

NOV to EDRP/Settlement Offer

Extraordinary

Ordinary X

N/A

(mark with x)

Notes

The Respondent came into compliance as of May 21, 2007.

0% Enhancement*

Subtotal 6

\$0

Total EB Amounts \$0

Approx. Cost of Compliance \$300

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal

\$395

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

\$395

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$395

DEFERRAL

20% Reduction

Adjustment

-\$79

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$316

Screening Date 19-Jun-2007

Docket No. 2007-0980-PWS-E

PCW

Respondent El Paso County Water Control Improvement District 4

Policy Revision 2 (September 2002)

Case ID No. 33862

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102673399

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 4%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty enhancement is due to two prior NOVs for the non-similar violations as those in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

Screening Date 19-Jun-2007

Docket No. 2007-0980-PWS-E

PCW

Respondent El Paso County Water Control Improvement District 4

Policy Revision 2 (September 2002)

Case ID No. 33862

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN102673399

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.46(q)(1)

Violation Description

Failed to issue a boil water notification to the customers of the water supply within 24 hours after the outage that occurred on May 17, 2007.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to issue a boil water notice could result in customers of the water supply being exposed to significant amounts of contaminants which would exceed levels that are protective of human health.

Adjustment \$500

\$500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$395

This violation Final Assessed Penalty (adjusted for limits) \$395

Economic Benefit Worksheet

Respondent El Paso County Water Control Improvement District 4
Case ID No. 33862
Reg. Ent. Reference No. RN102673399
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$300	21-May-2007	21-May-2007	0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the amount to implement procedures to ensure that bill notifications are provided to the customers, calculated from the date of the investigation to the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

There are no avoided costs associated with this violation.

Approx. Cost of Compliance

\$300

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN600861637	El Paso County Water Control Improvement District 4	Classification: AVERAGE	Rating: 1.41
Regulated Entity:	RN102673399	EL PASO COUNTY WCID 4 FABENS	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	0710018	
	WATER LICENSING	LICENSE	0710018	
Location:	117 E MAIN ST., FABENS, EI PASO COUNTY, TX, 79838			
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	June 18, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 18, 2002 to June 18, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Yuliya Dunaway Phone: (210) 403-4077

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 03/04/2003 (25970)
- 2 03/28/2003 (29542)
- 3 03/07/2005 (373178)
- 4 11/21/2006 (511867)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/18/2002 (16076)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.118(b)

Description: Failure to provide drinking water within the maximum permissible levels for the constituents iron and manganese, which are 0.3 mg/l and 0.05 mg/l, respectively.

Date: 03/05/2003 (25970)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(3)(G)
30 TAC Chapter 290, SubChapter D 290.46(d)(1)
30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)
30 TAC Chapter 290, SubChapter D 290.46(d)(2)(B)
30 TAC Chapter 290, SubChapter D 290.46(d)(2)(G)
30 TAC Chapter 290, SubChapter D 290.46(d)(G)
30 TAC Chapter 290, SubChapter D 290.46(f)(1)
30 TAC Chapter 290, SubChapter D 290.46(f)(2)
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(G)
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(iii)
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(G)
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(E)(i)
30 TAC Chapter 290, SubChapter F 290.110(b)(2)

30 TAC Chapter 290, SubChapter F 290.110(b)(4)
30 TAC Chapter 290, SubChapter F 290.110(b)(5)
30 TAC Chapter 290, SubChapter F 290.110(c)(2)(G)
30 TAC Chapter 290, SubChapter F 290.110(c)(3)
30 TAC Chapter 290, SubChapter F 290.110(c)(5)(G)
30 TAC Chapter 290, SubChapter F 290.110(c)(6)(G)

Description: Failure to operate the chlorination facilities which must maintain a minimum free chlorine residual of 0.2 mg/L in the far reaches of the distribution system at all times.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
EL PASO COUNTY WATER
CONTROL IMPROVEMENT
DISTRICT 4
RN102673399**

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§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0980-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding El Paso County Water Control Improvement District 4 ("El Paso County WCID 4") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and El Paso County WCID 4 appear before the Commission and together stipulate that:

1. El Paso County WCID 4 owns and operates a public water supply located at 117 East Main Street in Fabens, El Paso County, Texas (the "Facility") that has approximately 2179 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and El Paso County WCID 4 agree that the Commission has jurisdiction to enter this Agreed Order, and that El Paso County WCID 4 is subject to the Commission's jurisdiction.
3. El Paso County WCID 4 received notice of the violations alleged in Section II ("Allegations") on or about June 10, 2007.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by El Paso County WCID 4 of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Three Hundred Ninety-Five Dollars (\$395) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). El Paso County WCID 4 has paid Three Hundred Sixteen Dollars (\$316) of the administrative penalty and

Seventy-Nine Dollars (\$79) is deferred contingent upon El Paso County WCID 4's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If El Paso County WCID 4 fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require El Paso County WCID 4 to pay all or part of the deferred penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and El Paso County WCID 4 have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that El Paso County WCID 4 issued a boil water notification on May 21, 2007, and rescinded the notification on May 22, 2007 due to negative bacteriological sampling results. Additionally, by May 21, 2007, El Paso County WCID 4 implemented procedures to ensure that boil notifications are provided to the customers.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that El Paso County WCID 4 has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, El Paso County WCID 4 is alleged to have failed to issue a boil water notification to the customers of the water supply within 24 hours after the outage that occurred on May 17, 2007, in violation of 30 TEX. ADMIN. CODE § 290.46(q)(1), as documented during an investigation conducted on May 21, 2007.

III. DENIALS

El Paso County WCID 4 generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that El Paso County WCID 4 pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and El Paso County WCID 4's compliance with all the terms and conditions set forth in this Agreed

Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: El Paso County Water Control Improvement District 4, Docket No. 2007-0980-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon El Paso County WCID 4. El Paso County WCID 4 is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against El Paso County WCID 4 in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to El Paso County WCID 4, or three days after the date on which the Commission mails notice of the Order to El Paso County WCID 4, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

10/9/07


Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

7-27-07

Date

GERI DE LA TORRE

Name (Printed or typed)
Authorized Representative of
El Paso County Water Control Improvement District 4

INTERIM GEN MNGR

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

